UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	CASE NO. 14-11829
	)	CHAPTER 11
RIVER TERRACE ESTATES, INC.	)	REG/JD
	)	
	)	
Debtor	)	

DECISION AND ORDER ON EMERGENCY MOTION TO SCHEDULE EXPEDITED HEARINGS

On July 23, 2014.

Debtor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code on July 22, 2014. Soon thereafter, it began to file a series of first day motions along with a motion to schedule expedited hearings on those requests. That motion, which was subsequently amended, is the matter presently before the court.

The Bankruptcy Code, its associated rules of procedure, and the court's local rules provide the way various motions and other requests are to be processed and the amount of notice required. Some matters require hearings in all instances; others will only necessitate a hearing if there has been an objection following appropriate written notice; and the amount of notice required can vary. The court does, however, have the discretion to authorize matters to be heard on an expedited basis and to shorten the amount of notice time otherwise required. It must be emphasized, however, that such requests are not routine. If the movant wants the court to depart from the notice otherwise required by the various rules of procedure it must justify doing so. See, Matter of Fort Wayne Associates, 1998 WL 928419 *1 (Bankr. N.D. Ind. 1998). Furthermore, the desire to get the court's order as quickly as possible is not a sufficient justification. All litigants want their cases disposed of as quickly as possible and if that were a sufficient cause for expedition, every matter would become an

emergency. Instead, the movant should demonstrate that it will sustain some type of harm or injury if it must wait for the normal procedures to run their course: a harm or injury that is not accounted for or anticipated by the delay inherently associated with those deadlines. It should also be able to identify what that injury will be. See, Fed. R. Bankr. P. Rule 9013 (a "motion shall state with particularity the grounds therefor"). Conclusory allegations of harm, irreparable or otherwise, do not meet this standard. The motion should state the underlying facts leading to that conclusion. Dore & Assoc. Contracting v. American Druggist Ins., 54 B.R. 353, 358 (Bankr. W.D. Wis. 1985). Requiring anything less would amount to rubber stamping any request for expedited treatment.

In addition to identifying the nature of the claimed emergency, the court should also insist that the motion to be expedited is itself procedurally proper. That motion should comply with the requirements of the Federal Rules of Bankruptcy Procedure and the local rules of the court. One difference between traditional civil litigation and the motion practice associated with bankruptcy proceedings is that Rules 7018, 7019 and 7020, which are the procedural rules authorizing the joinder of claims and parties, do not apply to contested matters. See, Fed. R. Bankr. P. Rule 9014(c). Given the very different procedural requirements that govern different requests, the omission is not surprising. This court's Local Rule 9013-1 reminds litigants of this by stating: "every application, motion, or other request for an order from the court, including motions initiating contested matters, shall be filed separately from any other request, except that requests for alternative relief may be filed together." N.D. Ind. L.B.R. B-9013-1(a). The commentary to the local rule goes on to explain what alternative relief is – it will generally use the conjunction "or" rather than "and" – and cautions that if a movant is not certain whether alternative relief is being sought, separate motions should be filed. See, Fort Wayne Foundry Corp., 2009 WL 254493 (Bankr. N.D. Ind. 2009).

With those observations in mind, the court will turn its attention to the debtor's request for expedited relief as to its first day motions. There are 10 of them, seeking very different types of relief all on an expedited basis.[1] Despite that variety, the justification for processing all of these motions outside the normal procedures established by the Bankruptcy Code and its associated procedural rules is the same. The expedited relief "is essential to maintaining the viability of the debtor's business . . . and any delay in authorizing the relief therein could have a severe and irreparable effect on the debtor's operations and its transition into operating as a Chapter 11 debtor-in-possession." Emergency Motion for Expedited Hearing ¶ 11. These are conclusory allegations; not the particularized facts required by Rule 9013 which lead to those conclusions.

If the debtor is facing a genuine time constraint, the motion to expedite should identify what it is, the deadline by which action must be taken and the specific consequences of not meeting it. The court could end its inquiry there, with the conclusion that the blanket motion asking it to proceed on all motions on an expedited basis does not justify the relief sought. Nonetheless, it recognizes that in the Chapter 11 practice some things obviously are an emergency, to one extent or another, and some type of expedited processing is justified. Accordingly, the court has individually reviewed each of the motions in order to determine whether they should be processed in some "out of the ordinary" fashion.[2]

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[1]It is not without a bit of irony that the court acknowledges that a single motion asking for expedited hearings on ten different motions does not comply with N.D. Ind. L.B.R. B-9013(1)(a).

[2]This type of review would be facilitated if the movant made a conscious effort to make its motions as short as possible and still provide the particularized facts warranting the relief sought. For example, the court does not need the same five page recitation of the history of the debtor at the beginning of every motion. It should rarely take more than a few simple lines to adequately describe the context of any particular filing, enabling counsel to quickly move on to something more interesting and more important. Neither do we need long recitations of case citations justifying the

The first motion on the debtor's list is a motion authorizing the use of cash collateral. This is the most common type of first day motion and one which almost always justifies an emergency hearing. Unless a debtor is authorized to use cash collateral, it may lack the resources needed to pay the post-petition debts that it incurs through its continued operation in the ordinary course of business.

The second emergency motion asks the court to waive requirements imposed by the U. S. Trustee on Chapter 11 debtors concerning post-petition operations, bank accounts, books and records and the like. Those requirements relate to the way a Chapter 11 debtor-in-possession manages and accounts for its funds, from and after the date of the case. Since they come from the U.S. Trustee it would seem that the request should be directed there, not to the court. Nonetheless, if the court is going to excuse compliance with them it should consider the issue at the beginning of the case.

Debtor has also asked for an order authorizing it to pay pre-petition wages of its employees. This, too, is not an uncommon request. Wages that have accrued but are unpaid as of the date of the petition constitute a pre-petition claim, which the debtor is not authorized to pay absent an order of the court. Yet, if employees are not paid when expected they are likely to become dissatisfied and may seek employment elsewhere, all to the debtor's detriment. This constitutes an appropriate emergency request.

Debtor has asked to employ Globic Advisers as a notice and solicitation agent. This court's Local Rule B-2014-1 establishes the procedures governing applications to employ professionals such

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various requests. (If a brief is required, see, In re GT Automation, Inc., 320 B.R. 671 (Bankr. N.D. Ind. 2005) ,it should be filed separately.) This is particularily important in situations like the present one where the court is required to review 10 separate motions, each of which is much longer than necessary, in order to determine whether they should be heard on some type of expedited basis and, if so, how soon that should be.

as Globic. Nothing in debtor's motion to employ identifies any reason why compliance with those procedures is not satisfactory or what harm might befall the debtor if it is expected to follow them. There is no need to consider this request on an emergency basis.

Next on the list of emergency motions is one asking the court to determine that the appointment of a health care ombudsman is not necessary. The court is to make this determination within thirty days after the commencement of the case. 11 U.S.C. § 333(a)(1). Accordingly, there seems to be plenty of time in the next thirty days to hold a hearing. Indeed, to do otherwise might deprive parties in interest of the opportunity to investigate and consider the question. That is something the court should not do.

The next motion the debtor wants expedited is a request for a hearing on a proposed disclosure statement. Why the court should hold an emergency hearing on a motion to schedule a particular matter for hearing is a bit of a mystery, as is how the debtor came up with a proposed date of August 26 – which is not available on the court's calendar. Furthermore, the court sets disclosure statements for hearings as matter of course, it does not need to be prompted to do so and has its own procedures for considering them – they are not unusual, at least 28 days notice to all creditors and parties in interest with objections thereto due approximately 7 days prior to the hearing. Nothing in the debtor's motion indicates or suggests why the court's ordinary procedures would not suffice.

The debtor has also filed a motion to set a bar date for proofs of claim. Why it takes 11 pages to ask the court to set a deadline for creditors to advise the court and the debtor of what they are owed is a bit hard to understand. Also a bit hard to understand are the several exceptions and the many requirements that the debtor asks the court to establish for this deadline and filing the claim itself. Some of them appear to be unnecessary because they duplicate the requirements of the

Bankruptcy Code and rules of procedure, or state the natural consequence of filing or not filing a required claim. Others, perhaps not. Usually the court, on its own initiative, at the beginning of the case, sets a bar date for the filing of proofs of claims and advises creditors of that date in the § 341 notice, but it does so without attaching all the additional requirements and limitations the debtor seems to desire. If the debtor wants to do things a bit differently there is no harm in asking but the additional requirements it seeks caution against moving too quickly. Casting things in stone too early runs the risk of depriving parties in interest of the opportunity to address the issue.

The next motion the debtor wants handled on an expedited basis asks permission to honor the pre-petition claims of certain residents. The Seventh Circuit's decision in In re Kmart Corp., 359 F.3d 866 (7th Cir. 2004), is highly skeptical of giving the debtor the unfettered discretion to pay selected pre-petition creditors. Nonetheless, to the extent it can be done, that decision also indicates that a highly important consideration is notice to creditors of what the debtor is asking to do. Furthermore, some aspects of the request make it seem little different from a motion to assume an executory contract, which under the local rules of this court is usually processed on a 21 day notice to creditors of the opportunity to object. See, N.D. Ind. L.B.R. B-2002-2. In light of these considerations, there is no reason to expedite the matter and doing so would be contrary to the circuit's directives.

Another first day motion asks for the entry of an order setting noticing, case management and HIPAA information procedures. This motion seems to run a foul of the requirement that each motion must be filed separately. See, N.D. Ind. L.B.R. B-9018-1 (requirements for motions to file under seal). It seems to seek to limit the number of creditors or parties in interest that would be served with notices of certain events in this proceeding as well as to redact certain information from

its filings and make other filings under seal. The apparent justification for these limitations is the cost associated with giving notice. While the court acknowledges that that is often a concern, it must also recognize that notice of proceedings and the opportunity to participate in them is often the life blood of the Chapter 11 process. As a result, the court should approach any request to limit notice or access to what are otherwise supposed to be public records with caution. They are more appropriately determined on a case by case basis and the court sees no need to consider a blanket request to be an emergency requiring expedited treatment. Indeed, limiting notice at the very beginning of a case, before creditors have become aware of it, can be counter-productive and destructive of their right to information.

The final emergency motion has been filed pursuant to § 366 of the Bankruptcy Code and asks the court to prohibit utilities from disconnecting the debtor's service and finding that the debtor's proposed treatment constitutes adequate assurances under that portion of the bankruptcy code. This is not an emergency. The timelines Congress built into § 366 provide adequate opportunity for the parties to propose, consider and obtain a ruling within the 30 days during which utilities are prohibited from acting.

Based on the foregoing, the debtor's emergency motion for expediting hearings is granted in part and denied in part. The court will, by separate order, schedule expedited hearings on those matters that justify such relief. As to the other pending motions, they will be scheduled for such proceedings as and when may be appropriate.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court